

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL APPEAL No. 730 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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NIRMALABEN @ MEENABEN W/O MADHUBHAI BHANGI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

MR MS TRIVEDI for the Appellant. MR RAJENDRA M DESAI for the Appellant.
Ms. Nandini Joshi, Additional PUBLIC PROSECUTOR for the respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 21/06/2006

ORAL JUDGMENT

The present appeal has been preferred against the judgment and order dated 30th August, 2002 in Sessions Case No. 42 of 1999 passed by the learned Sessions Judge, Surendranagar, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs. 10,000/-, in default, one year's rigorous imprisonment, for the offence punishable under section 307 of the Indian Penal Code.

2. Brief facts leading to the present appeal

are that on 22nd February, 1999 between 3.00 p.m. to 3.15 p.m., the present appellant firstly beat the victim Artiben and thereafter, by pouring kerosene upon her, she was set on fire. Artiben who was aged 15 years, ran out of the house. Accused ran away.. There were burns upon her face, chest and stomach. Nearby neighbours rushed immediately and she was thereafter taken into the house. In the meanwhile, the accused who had also run away, came back and the present appellant gave threat that the victim should give falsely the names of Harijan Babu, Manubhai and Kalubhai and on that condition, she will be taken to hospital. The victim being of tender age, agreed to that and thereafter, she was taken to the hospital, initially, at civil hospital, Limdi, where Dr. Sunil Patel, P.W. 7 asked the victim Artiben as to who had caused injuries and she gave the name of the present appellant. This was also recorded by Dr. Sunil Patel in the certificate which is at exh. 22. Thereafter, doctor of civil hospital, Limdi referred the case to civil hospital, Ahmedabad and victim Artiben was taken to civil hospital, Ahmedabad, where Dr. Narendrabhai Joshi (P.W. 8) treated her. There also,

the doctor asked the case history and she had given the name of the appellant. Then Dr. Narendrabhai Joshi has also recorded this fact in his certificate at exh. 24. Thereafter, the complaint was also taken wherein also, she has narrated that kerosene was poured by the appellant upon her and thereafter, she was set on fire. Upon further investigation, charge-sheet was filed against the present appellant and she was charge-sheeted. After recording depositions of prosecution witnesses before the Sessions Court, Surendranagar, the present appellant has been convicted and sentenced as above.

3. Though this appeal was listed on the board for final hearing, when called out, the learned advocate for the appellant was absent. The matter has been notified twice on two different occasions so that the learned advocate for the appellant can argue the matter. This being the appeal of the year 2002, the court has taken up final hearing by listing this matter in a separate board. Despite this, nobody has remained present on behalf of the appellant.

4. I have heard the learned additional Public Prosecutor who has pointed out that looking to the depositions of the prosecution witnesses and documents on record, they are correctly appreciated by the trial court and the order of conviction passed by the trial court is absolutely true and correct and in consonance with the evidence on record. It is also submitted by the learned Additional Public Prosecutor that the incident has taken place on 22nd February, 1999 between 3.00 to 3.15 p.m. and the FIR has been registered immediately on the very same day. Looking to the deposition of the victim Artiben P.W. 5 recorded at exh. 17, she has stated that the appellant has caused injuries to her and thereafter, she poured kerosene upon her and set her on fire. Immediately Arti rushed out of the house and neighbours came immediately and they brought Artiben-complainant in the house. After committing the offence, the appellant had run away, who came later on and compelled Artiben to falsely give the names of other persons as accused and on that condition only, she will be taken to the hospital. Thereafter, before the doctor of civil hospital, Limdi, she has given

the name of the present appellant in her case history before independent witnesses. Learned Additional Public Prosecutor has further submitted that P.W. 5 Artiben is a trustworthy witness, she is an injured eye witness and her version is corroborated by the deposition of P.W. 7 Dr. Sunil Patel at exh. 21, who is a doctor in civil hospital, Limdi and the certificate exh. 22. Her version has also been further corroborated by the deposition of P.W. 8 Dr. Narendrabhai Joshi at exh. 23, who is a doctor of civil hospital, Ahmedabad and also further corroborated by the certificate issued by the doctor at exh. 24. It is also submitted by the learned Additional Public Prosecutor that even neighbours, i.e. P.W.no.10 and P.W.no.11 have also given depositions at exhs. 26 and 27 against the present appellant. Her behaviour is also mentioned by these two neighbours, prosecution witness nos. 10 and 11. Thus, there are no omissions and contradictions in the depositions of the prosecution witnesses. Consistently, in one breath, all the prosecution witnesses have proved the guilt of the present appellant beyond reasonable doubt. With the help of

the police witnesses, P.W. Nos.12, 13 and 15, panchnama of clothes of the victim of scene of offence has also been proved which also corroborates the version of the prosecution case. Thus, there is no error committed by the trial court in convicting the present appellant. She has committed the offence punishable under section 307 of the Indian Penal Code. Even the entry made in the station diary at exh. 34 also reflects the fact that the appellant has committed the offence punishable under section 307 of the Indian Penal Code. Even the quantum of punishment awarded by the trial court is absolutely in proportion with the offence committed by the appellant as well as mensrea of the appellant and the act committed by the appellant and therefore, the appeal may not be entertained by this Court.

5. Having heard the learned Additional Public Prosecutor for the respondent State and looking to the evidence on record, the medical certificate issued by the doctor and other prosecution evidence, I see no reason to take any deviation from the conclusion arrived at by the

learned Sessions Judge, Surendranagar in Sessions case no.42 of 1999 vide judgment and order dated 30th August, 2002, whereby the present appellant has been convicted and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs.10,000/-, in default, rigorous imprisonment for one year for the offence punishable under section 307 of the Indian Penal Code, for the following facts and reasons.

(i) Looking to the evidence on record, it seems that the incident has taken place on 22nd February, 1999 between 3.00 to 3.15 p.m. Immediately FIR has been registered and the victim has been examined as P.W. 5 at exh. 17. The victim, namely Artiben has clearly deposed and has narrated the whole incident in detail and has pointed out that it is the present appellant who had physically beaten the victim and thereafter, she poured kerosene upon her and she was set on fire by the present appellant. Immediately, the victim

Artiben ran out of the house and the present appellant had run away. The victim was shouting and screaming and neighbours came immediately at the place of offence. She was taken in the house and thereafter, the appellant came at the house lateron. The appellant administered threat to the victim Artiben who is of tender age. She was 15 years of age and she was administered threat that she must give names of other persons as accused, then only she will be taken to the hospital. She has narrated in detail all these aspects in her deposition. She has also given correct names of the accused before independent witnesses like Dr. Sunil Patel P.W. 7 of civil hospital, Limdi. Even looking to the cross-examination of P.W. 5 Artiben, nothing is coming forth in favour of the present appellant. There are no omissions and contradictions in her deposition. On the contrary, there are enough corroborations

depositions of several witnesses and by documentary evidence, like exhs. 22, 24 and exh. 13-namely certificates issued by doctors of civil hospital, Limdi and civil hospital, Ahmedabad and panchnama of clothes of the victim. Her version has also been supported by the depositions of P.W. Nos. 7,8,10 and 11 who are doctors and neighbours. It appears from her deposition that she is a trustworthy witness. There is no reason for this court to disbelieve this injured eye witness. Her deposition has been rightly evaluated by the trial court and there is no error committed by the trial court putting reliance upon this injured eye witness at exh. 17.

(iii) Looking to the deposition of Dr. Sunil Patel P.W. 7 at exh.21 and looking to the deposition of Dr. Narendrabhai Joshi P.W. 8 at exh. 23, who has narrated in detail the burn injuries and has also

narrated that if she would not have been given treatment immediately, then the injuries were sufficient to cause death. They have also narrated that when they asked the complainant-victim eye witness Artiben as to who caused injuries, they were told by the victim that it is the present appellant who caused injuries by pouring injuries and setting her on fire. These facts have also been recorded in the certificates at exhs. 22 and 24 issued by doctors. Thus, the tender aged witness P.W. 5 has rightly narrated the offence committed by the present appellant and she has also narrated these facts before independent witnesses, namely p.w. 7 and p.w.8. These two witnesses are independent witnesses and have no relations with the present appellant. There is no reason for this court to disbelieve these witnesses who are doctors of civil hospital, Limdi and civil hospital, Ahmedabad respectively.

(ii) There still further witnesses who are neighbours who are examined as P.W. Nos. 10 and 11, namely Manubhai Parmar at exh. 26 and Babubhai Maganbhai at exh.27. They have stated enough against the present appellant and about her behaviour towards the victim. They are also supporting the case of the prosecution. They are residing in the nearby area where the injured eye witness is residing and where the appellant was residing. Looking to their cross-examination also, nothing is taken away from their examination-in-chief. They are also trustworthy witnesses so far as the present incident is concerned. Their depositions are corroborative to the case of prosecution and to the deposition of victim- P.W.5.

(iii) Looking to the depositions of panch witnesses, namely exhs. 9,10,12,15

and 16, P.W. Nos. 1 to 4 have turned hostile, but the fact remains that the scene of offence panchnama and panchnama of the clothes of the victim have been proved beyond reasonable doubt by police witnesses. Exh. 13 is the panchnama of the clothes of victim have been proved beyond reasonable doubt by the police witnesses. Looking to the deposition of Indrasinh Rana P.W. 12 at exh. 30, who is a police constable, he has stated that in his presence, panchnama of clothes of victim was drawn. This witness has proved the panchnama of the clothes of victim which revealed the smell of kerosene. Likewise, the scene of offence panchnama is also proved by the deposition of PSI Balvirsinh Jadeja P.W. 16 at exh. 35. Both these panchnamas are also corroborating the complaint which is reduced in writing at exh. 18 and corroborative to the deposition given by the injured eye

witness at exh. 17.

(v) Looking to the totality of the evidence on record, both, by prosecution witnesses and several documentary evidence which are contemporary record, proved by the doctors and witnesses, in my opinion, the prosecution has proved beyond reasonable doubt that the present appellant had set on fire the victim, namely Arti and thereby has committed the offence punishable under section 307 of the Indian Penal Code. Looking to the nature of burn injuries and depositions of p.w. Nos. 7 and 8, they were sufficient to cause death and they were endanger to life of the injured eye witness if she would not have been given immediate treatment.

6. As a cumulative effect of the aforesaid facts and reasons and depositions of the prosecution witnesses and documentary evidence on record, it is

proved beyond reasonable doubt that the present appellant has committed the offence punishable under section 307 of the Indian Penal Code. The conclusion arrived by the trial court is true, correct and in consonance with the evidence on record. There is no error committed by the Sessions Court, Surendranagar in evaluating the evidence on record. Even the quantum of punishment awarded by the trial court is absolutely justified looking to the nature of offence committed by the appellant. I therefore, see no reason to take any deviation from the conclusion arrived at by the trial court. There is no substance in the present appeal. Hence, the same is hereby dismissed.

(D.N.Patel, J)

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